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B. D. Bryant Jr.

THE

TREE OF LEGAL KNOWLEDGE;

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DESIGNED AS

AN ASSISTANT TO STUDENTS

IN THE

STUDY OF LAW,

IN WHICH THE ADMIRABLE SYSTEM AS LAID DOWN BY BLACKSTONE IN HIS COMMENTARIES, IS PRESERVED.

BY

AN ATTORNEY AT LAW.

RALEIGH,
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INTRODUCTION.

"The established reputation of Judge Blackstone's commentaries has rendered it very deservedly the foundation of legal studies. Previous to the publication of the commentaries, the student was compelled to assume Coke's commentary on Lyttleton as an institute and thus commencing his early studies without method, his subsequent progress was laborious, and his acquisitions unsatisfactory.

In the inception of a study, accurate and logical arrangement is indispensible—without it the student will always grope in the dark, and, ultimately, find his labours useless. An early sense of the force of this idea, induced the author to plan and execute the present work for his own improvement. Its great object is to impress upon the mind the methodical divisions and subdivisions of the Commentaries and thus enable the student effectually to master the work and preserve the arrangement as the general guide of his future studies."

To do it in the most forcible manner, has been the object of the author. Believing that the mind more readily grasps and more vividly retains impressions communicated through the sense of perception, he has clothed the fixed principles of that

science in the garb of material objects. He is induced to think, he has not flattered himself, in believing that he has chosen the best method to attain his end, when he remembers with a distinctness almost equal to the visible objects now formed upon the retina, the expression of features which animate the group in that inimitable picture of "Christ rejected." Nor is the recollection less distinct of the Geographical knowledge of this world with its mighty oceans, boundless continents, indented bays, and serpentine rivers, which was impressed on his mind in early youth by the lines and shades of an atlas. The author humbly conceives that the "Tree of Legal Knowledge" will prove as useful in fixing the various divisions and sub-divisions of that abstruse science firmly on the mind, as does the pencil of the artist in pourtraying the striking events of the past, or the atlas in communicating the knowledge of countries described by the traveller. To the practioner, also, it is deemed useful in consolidating his learning, and forming an instructive and ornamental appendage to an office. The gentleman, too, who is desirous of becoming acquainted with that system of laws of which ours is principally composed, and which is highly necessary to every legislator and scholar; will be materially benefitted by its use, especially in conjunction with the Commentaries.

The author has submitted a brief explanation of the "Tree of Legal Knowledge," the principal part of which may be found in the Commentaries with trifling alteration.

EXPLANATION.

Law is the rule and bond of men's actions, whereby they are commanded to make use of their faculties of reason and free-will for the regulation of their conduct.

Natural Law, or the Law of Nature, may be defined to be, those general principles of Justice deduced by the operation of reason, from the natural relation of things antecedent to positive precept: such as living honestly, hurting nobody, rendering to every one his own, &c.

But by the fall of our first parents, human reason became darkened; and as that in its vigour was necessary to the discovery of these principles, the beneficence of the Deity interposed and rendered clear its laws by immediate revelation. This was termed, revealed law.

Upon these two foundations are based the laws of England. As those who reason correctly will arrive at the same conclusion, when their premises are the same; the customs and usages of mankind were formed in obedience to the suggestions of right by the operation of reason, or in accordance with the precepts of the Almighty. These rules of action soon became binding from conviction of their propriety by common consent, under the name of general customs.

With regard to certain minor considerations, different ideas of propriety existed in different sections of the same country, and as they did not con-

flict with the rights of those out of that particular district, they were permitted and sanctioned under the name of PARTICULAR CUSTOMS.

In the administration of justice, certain rules were introduced in particular courts, which were derived from the digests of Imperial Rome, and in later times from the opinions of the Latin fathers and decretal epistles of the Pope; deriving their force, merely from their adoption. These were styled PARTICULAR LAWS.

These three roots, GENERAL CUSTOMS, PARTICULAR CUSTOMS, and PARTICULAR LAWS, springing from the life-giving soil of NATURAL and REVEALED LAW; grew in time into that magnificent tree the COMMON LAW OF ENGLAND, the kindly shelter of whose branches is sought in the remotest parts of the earth, and whose fruit nourishes the inhabitants of almost every clime where the sun of Liberty shines.

That men might know their duty to their fellow men,—to render justice to others and demand it for themselves, it became necessary to define the rights of man. These the Common Law commanded the observance. Violations of these rights were of course WRONGS. These the Laws forbid. These RIGHTS either appertained to the person of individuals, or else to the property which they might acquire. They were therefore divided into RIGHTS OF PERSONS and RIGHTS OF THINGS. Violations of these rights were injuries, either to separate individuals in person or property, or else affected the whole community by their evil tendency, and contempt for the governing power. The latter generally includes the former. The former or civil

injuries, were denominated PRIVATE WRONGS; the latter, or crimes and misdemeanors, were termed PUBLIC WRONGS.

As these laws existed up to the first year of the reign of Richard 1st, (the time of legal memory,) they form what is termed the LEX NON SCRIPTA, or COMMON LAW.

The objects of property became more numerous and diversified as civilization advanced; changes took place in the opinions and customs of mankind, and it became necessary that the laws should keep pace with the improvement in the social state. To that end, the power intrusted with the care of the Public welfare, passed such acts, or promulgated such edicts as tended to its accomplishment. These form the LEX SCRIPTA or STATUTE LAW. The reader will perceive it personated by a husbandman under the tree of the Common Law, with a green bough in one hand, to engraft upon the branches of that tree representing an *enlarging* statute; and a pruning hook in the other to lop off excrescences, indicating a *restraining* statute.

The piece being autumnal the green bough of the mistletoe shows at a glance what is the Common Law, and what changes have been introduced by statute.

The RIGHTS OF PERSONS, constituting the first or right branch of this tree, delineates the rights of man whether absolute or relative, the classes of society whether ecclesiastical or lay; civil, military or maritime; and the different degrees of standing from the king to the peasant,—the form of government, and the heads under which it is to be contemplated. Interspersed throughout are the

insignia, emblems and mottoes, which denote the rank, precedence, and peculiar province of each.

The second branch which denotes the RIGHTS OF THINGS, commencing with the prominent division of real and personal, keeps them distinct* throughout; and enables the reader to have constantly before him the kinds of property, the estates which may be had therein, the various means by which title may be acquired and lost—making the reader also acquainted with the persons capable of aliening, and of being aliened to, and the different methods of aliening—with deeds, their kinds, requisites, component parts, how avoided, &c., which bough hangs over the whole in indication of the fact that almost all property is held by or under deed.

Next in succession, is PRIVATE WRONGS. After expressing the means by which man may agreeably to law redress his own wrongs without recourse to any tribunal, and the redress which the law gives without seeking her aid; the reader is introduced into the various courts where he may obtain redress, informed of the method of obtaining it, and all the wrongs which he is liable to receive in person or property, (below public offences) and the remedy for every injury. These remedies he will perceive are borne by birds either flying towards the tree, or perched upon its boughs; with a scroll waving from its beak whereon is written the remedy. The first position indicates injuries commit-

* Among real estates in the class of those held upon condition, are enumerated Statutes Merchant and Staple and Elegit, which are properly chattels real, and should be enumerated as personality; but being treated of by Judge Blackstone under the head of estates upon condition, they are there mentioned.

ted with force, the last, injuries which flow as the consequences of some illegal act.

The last or left branch represents PUBLIC WRONGS. This embraces the nature of crimes and their punishments, the persons capable of committing them, the method of redress in criminal courts, the means of preventing their perpetration, and their various kinds: against God and Religion, the Commonwealth, the Government, the Laws of Nations and Individuals. All the wrongs which may be offered to each are accurately defined, and the punishments which follow their commission. These punishments are represented by figures, calculated by their appearance to convey some idea of their comparative enormity. For a more full and graphic expression, an index to this branch is annexed. That index is introduced in an allegory also, conveying still a lesson of instruction. A temple appears supported by three massy columns emblematic of the mixed government of Great Britain, viz. Monarchy, Aristocracy and Democracy. Upon the entablature which they support, rises a finely chased column representing the British Constitution. Capping that column, is the emblem of the Genius which presides over the destinies of that mighty nation. On one hand from a rainbow, that ancient sign of a covenant, of obedience and protection, beams a refulgent light; which opens the vision to all the benefits which flow from obedience to laws, and good government. Plenty with her cornucopia of profusion, mild, gentle peace, wreathing her civic crowns, commerce with her sisters, Arts and Science, all revelling in the delights of a millennium. But on the other hand, may be

perceived in the darkness that reigns there, "in horrible emblazonry are limned" the figures of terrific vengeance, breathing forth the punishments which await each crime. "Where passed the shaft" the "trace is found," and on it written the chastisement which follows the commission of misdemeanors.

EXPLANATION OF THE BRANCHES.

The sub-soil from which it springs is Natural Law; after which Revealed Law was given to man forming the surface. Fixed in this soil, and springing from it by the roots of General Customs, Particular Customs, and Particular Laws (which comprise the Civil and Canon Laws), is the Tree of the Common Law which commands what is right, and forbids what is wrong. These Rights are either of Persons or of Things; and the wrongs are either Private or Public, which four divisions form the four books of Blackstone. The Statute Law is represented as a husbandman, with a green bough in one hand, and a pruning hook in the other. As the aim of the Statute Law is to enlarge or restrain the common Law to suit the wants of society, it is represented as lopping off where the common law has been abrogated, and engrafting

where it has been enlarged. The piece being autumnal, the green bough shows what changes have been introduced since the first year of the reign of Richard I., the period of Legal memory.

The rights of persons commences with the division of persons into Natural and Artificial. Artificial persons are corporations, which are either aggregate or sole. Aggregate corporations are either Ecclesiastical or Lay, and Lay corporations are Civil or Elemosynary. The same divisions exist in Sole corporations.

The Rights of natural persons are absolute or Relative. Absolute rights are Personal Security, Personal Liberty, and Private Property. Personal security is the uninterrupted enjoyment of Life, Limb, Body, Health and Reputation. Personal Liberty is the unrestrained, &c. Private Property is the free use and disposal of acquisitions.

Relative Rights are Private or Public. Private are such as subsist between, and regard Husband and Wife, Parent and Child, Master and Servant, and Guardian and Ward.

Public Relative Rights are such as exist between governors and the governed. The governed are either natives or foreigners. Foreigners are denizens or aliens. The whole are again divided into Clergy and Laity. The Clergy consist of Archbishop, Bishop, &c., down to Curate, who having all the labour to do, and little remuneration, has a scroll indicative of his situation—Crux Christi nostra corona, " The cross of Christ is our crown." The Laity are either civil or military and maritime. The whole are again divided into

Nobility and Commonalty. The coronets on the branches of Duke, Marquis, Earl, Viscount and Baron are the insignia of the different degrees of nobility. Of the commonalty who are titled, emblems of their rank are also introduced; and of those who are not, mottoes emblematic of their relative situation or intrinsic merit are introduced, viz. Gentlemen,—*Sequa nec inferior*, I follow, but am not inferior. Yeoman—*Homo sum*, I am a man. The Governors are supreme or subordinate. Subordinate are Sheriff, Justice of the Peace, Constable, Coroner, Overseer of the Poor, and Surveyor of the Roads. The supreme are Legislative and Executive. The Legislative is the Parliament, which consists of King, Lords and Commons, who form it; appended to that is an emblem of what properties a good government ought to possess. Vi sapientia virtuti: Wisdom, Strength, and Virtue. The heads of the laws and regulations of Parliament next succeed. From this Parliament issue the statutes which appear in green, one of which is in the hand of the husbandman.

The Executive or King must be viewed under various heads, viz. Title, Duties, Royal Family, Revenue, Councils and Prerogative. Title is hereditary, peculiar to itself, limited by Parliament, still hereditary. For duties see the limbs. For Royal Family, see the branches. Councils—Parliament, Deo Regi Patria, God, the king, and the people. Peers of the realm—Nec regi nec populo sed utroque, Neither the king nor the people, but both. Judges of the Court—Legi regi fidelis, Faithful to the king and the law. Privy Council—De bon vouloir servir le roy, To serve the king with

right good will. Prerogative is either incidental or direct. Incidental prerogatives are exceptions in favor of the king. Direct prerogative regards his character, authority and Revenue. His character is perfection, sovereignty and perpetuity. Emblems of each are the allseeing eye, crown and sceptre, and Phoenix on her funeral nest. Authority is either foreign or domestic. Foreign consists in receiving and sending ambassadors, making treaties, declaring war, and making peace, granting letters of marque and reprisal, and granting safe conducts. Domestic authority extends to the veto power, generalissimo of fleets and armies, fountain of justice, fountain of honor, arbiter of commerce, head of the church.

Things are either real or personal. Personal things are called chattels which are either real or personal. They are viewed as to their nature, or how title is acquired. Their nature extends to number and connexion of owners, the quantity of interest and time of enjoyment. They are held only in severalty, joint tenancy and in common, which differs from real property. Quantity of interest is either in possession or in action. Possession is absolute or qualified. Time of enjoyment in possession and remainder by devise. Title is acquired by occupancy, forfeiture, prerogative, succession, custom, marriage, judgment, gift or grant, bankruptcy, contract, testament and administration.

Real property is to be considered under four different heads, viz. kinds, tenure by which it may be held, estate which may be had therein, and title. Kinds are either corporeal or incorporeal heredita-

ments. Incorporeal are advowson, tithes, &c. Tenures are either Feudal, ancient English, or modern. English tenures. Feudal tenures were abolished by 12th Charles 2d, also Knight service which was sunk in free and common soccage tenure. Pure villenage was changed to ancient demesne, and villein soccage into copyhold. Modern Englisq tenures are free and common soccage;—copyhold, ancient demesne and knight sergeantry. Common soccage includes Borough English, petit sergeantry, gavelkind, and any tenure when the service is certain. Estate which may be had therein must be considered under three heads; time of enjoyment, quantity of interest, and number and connection of owners. Time of enjoyment is either in possession or expectancy. Expectancy is in remainder or reversion. Remainders are vested or contingent. Contingent refer to uncertainty of person or event, among which are also classed executory devices. Number and connexion of owners is in severalty, joint tenancy, entirety, coparceny and in common. Quantity of interest is either freehold, less than freehold, and estates upon condition. Freeholds are either of inheritance or not of inheritance. Of inheritance fee simple or limited. Limited fees are qualified, conditional and feestail; not of inheritance, conventional or legal. Conventional, per auter vie, i. e. for another's right, and for one's own right. Legal is tenancy by try courtesy, tenancy in tail after possibility of issue extinct, and tenancy in dower. Less than freehold is for years, at will and at sufferance.

Estates upon condition are implied or expressed. Expressed is either precedent or subsequent.

Subsequent is either vivum vadium, mortuum vadium, statutes, merchant and staple, and elegit.

Title is either in naked possession, apparent right of possession, actual right of possession, or right of property, which is acquired by purchase or descent. Descent is lineal or collateral. Purchase is any other mode of acquisition except descent, as escheat, occupancy, prescription, forfeiture, and alienation. Escheat is where the inheritable blood in the possessor is supposed to become extinct by crime or death, and it reverts back to the lord of the fee. Prescription is where incorporated hereditaments may be acquired—it is peculiar in descent, cannot arise by record, must lie in grant and by tenure in fee. Forfeiture when from certain offences the title to property becomes destroyed. Alienation is by record, custom, deed and will. The requisites of a deed are proper parties, sufficient consideration, &c. Parts of a deed, premises, &c. These deeds may be avoided, ab initio, for want of requisites, also by matter ex post facto, as any alteration, breaking off or defacing the seal, &c. Different kinds of conveyances. The green branches on this limb refer to those deeds which have their effect from the statute of uses, 27th Henry 8th, and the balance are deeds of common law.

Private Wrongs are such injuries as are offered to individuals in person or property and are termed civil injuries. They are redressed by act of the parties, by operation of law, and by suits in court. Act of the parties is by the injured party, or by both parties. By the injured party in defence of self or household, recaption, entry, &c.

Both parties by accord and arbitration. Operation of law is retainer and remitter. Suits in court comprehends the proceedings in courts, names of the courts, and wrongs cognizable by courts, whether ecclesiastical, common law, military and maritime courts. Wrongs cognizable by the ecclesiastical are in their nature pecuniary, matrimonial and testamentary. Military are grievances in matters of honor and adjusting armorial bearings. Maritime are causes arising at sea. Common law are encroachment, &c. refusal, &c. wrongs from crown to subject, from subject to crown, and from subject to subject. They are offered to persons or things. When offered to persons it affects their relative or absolute rights. Relative wrongs are such as the husband may receive through the wife, the parent through the child, master through the servant, and guardian through ward. The birds bring the name of the writ by which it is redressed. When flying they denote remedies for injuries committed with force. When perched, remedies for injuries that are the consequence of some illegal act. Absolute are such injuries as are offered to rights of that kind, and are laid down in the branches, as injury to life, which is a public wrong, also limb and body. To limb and body may be offered five injuries, the four last of which are indictable. Injuries may be offered to health and reputation. Things are as before laid down, real and personal. Injuries to real property are ouster, trespass, nuisance, waste, subtraction, disturbance. Ouster is taking possession to the exclusion of the owner, and is either of the freehold or chattels real.

Ouster of the freehold is by abatement, intrusion, disseisin, discontinuance, and deforcement. Injury to personal property is either in possession or in action. In possession is injury by deprivation of possession or by damage done while in possession. Deprivation of possession is by illegal taking or illegal detaining. Injury by damage done to property is directly or by consequence of illegal acts. Personal property in action is either express or implied. Express contracts are promises, covenants, and debts. Implied contracts are either positive or presumptive. Positive are such as judgments, penalties, &c. Presumptive are work and labour done, goods sold, &c., which the law presumes are to be paid for.

Pursuit of Remedies by action by Common Law are, 1st, by Original Writ; 2d, Process, Pleadings, Issue, Trial, Judgment, Appeal, and Execution. Original Writ is optional or peremptory. Process is first by Summons, then if it fails, Attachment, Capias ad Respondendum, Testatum Capias, Exigent, Writ of Proclamation, Capias ut Lagatum. In the Court of King's Bench, first is by bill of Middlesex, which if it fails is followed by a latitat. In Exchequer the first process is Quo Minus. Pleadings. The first is the Declaration and the Defence, then the Plea which is either dilatory or to the action. Dilatory plea is intended for delay, and questions the correctness of the remedy, and is either to the jurisdiction of the Court, to the disability of the Plff. and in abatement; to the action is confession or denial. Denial is general issue or special Plea. After Plea is Replication, rejoinder, surrejoinder, rebutter and sur rebutter,

and when you come to what is asserted on one hand and denied on the other it is said to be at issue. Issue is either on matter of fact or on matter of law. The latter is called a demurrer. Issue on matter of fact is tried by jury. Trial is either by record, inspection, certificate, witnesses, or by jury. Judgment is either interlocutory or final. Appeals are either by writ of attaint, writ of deceit, audita querella, or writ of error. Execution is process whereby judgment is enforced, and is special, &c.

Public Wrongs, are contemplated under different heads. The general nature of crime and punishments, who capable of committing, their several degrees of guilt, several species of crimes and their punishments, the means of preventing their perpetration, and mode of inflicting punishments by Courts. The nature of crimes and misdemeanors: the first are heinous offences, the last are offences of less malignity.

All persons are capable of committing crimes except when they labour under a defect of understanding, where there is understanding but not called into action, and when the action is constrained, and the King may be included by virtue of prerogative incidental: of principal and accessary, it is plainly laid down. Several kinds of crimes and misdemeanors are against God and Religion, the law of nations, the commonwealth, the Government, and individuals. These offences are all laid down in their various branches, and all that are green are by statute. In ascertaining the punishment for these crimes consult the index. Some you will find with two or three arrows: you have only to add all the punishments together.

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